OD–7

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

CUSTA/10/2011
IA No: GA/2/2022
COMMISSIONER OF CUSTOMS (AIRPORT & ADMN.), KOLKATA
VS.
SHRI VIKASH KUMAR

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : 10th January, 2024

Appearance :
Mr. K.K. Maiti, Adv.
Mr. Tapan Bhanja, Adv.
...for appellant

Mr. Prabir Bera, Adv.,
led by Mr. Arijit Chakraborti, Adv.
...for respondent

The Court : We have heard Mr. K.K. Maiti, learned Advocate appearing for the appellant and Mr. Prabir Bera, learned Advocate, led by Mr. Arijit Chakraborti, Advocate for the respondent/assessee.

The revenue has filed this appeal under Section 130 of the Customs Act, 1962 (the Act) challenging the order passed by the Customs, Excise And Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata in Customs Appeal No. 79295 of 2018, dated 29th July, 2021.

The revenue has raised the following substantial questions of law for consideration :

(i) Whether the Learned Tribunal has committed the gross error of law by not dealing with the appeal on merits and by not giving any independent reason thereto ?

(ii) Whether the Learned Tribunal's observation is correct as the Hon'ble High Court has set aside the impugned Order-in-Original dated 06.09.2018 in the case of Sampad Narayan Mukherjee is binding in the case of present respondent when the said respondent herein is not a party in the case before the Hon'ble High Court ?

(iii) Whether the Order fo the Hon'ble High Court in Writ Petition No.25447(w) of 2018 which was relied upon by the Learned Tribunal is in personam or in rem ?

(iv) Whether the observation of the Adjudicating Authority for non granting the opportunity of cross-examination to the respondentis required to be dealt with by the Learned Tribunal before remanding the case for denovo Adjudication ?

(v) *Whether in terms of Section 138B of the Customs Act, 1962 is it mandatory for the Adjudicating Authority to provide opportunity of cross-examination when the voluntary statements of the witnesses have not been retracted ?*

(vi) *Whether the reliance of the order of the Hon'ble High Court bythe Learned Tribunal is correct when the order of the Hon'ble High Court dated 01.02.2019 in W.P. No.25447(w) of 2018 (Sampad Narayan Mukherjee –Vs- Union of India & Ors.) is under challenge and pending before the Hon'ble Division Bench ?*

The order impugned in this appeal is a common order passed by the learned Tribunal in a batch of cases and earlier revenue had filed appeals in CUSTA 4 of 2022, CUSTA 5 of 2022, CUSTA 6 of 2022, CUSTA 7 of 2022, CUSTA 8 of 2022 and CUSTA 9 of 2022 challenging the very same order and those appeals were disposed of with the following directions :

"The respondents are directed to treat the order of adjudication dated 6th September, 2018 as a show cause notice and the respondents are directed to submit their additional reply clearly pointing out that the statements recorded under Section 108 of the Act cannot be relied upon to frame the noticees and the respondents shall submit their additional reply on the alleged evidence which is stated to be available with the Department as mentioned in the order of adjudication. The respondents are directed to submit their reply within a period of six weeks from the date of receipt of the server copy of this order. On receipt of the reply, the adjudicating authority is directed to afford an opportunity of personal hearing to the authorised representative of the respondent and adjudicate the case afresh.

We make it clear that while adjudicating the case afresh, the adjudicating authority shall not rely upon and refer to any of the statements which have been recorded under Section 108 of the Act from third parties in which the names of the respondents have been referred to and the adjudication shall be done based on the evidence which is stated to be available with the Department and considering the objections that the respondents will raise in their additional response directed to be submitted as above. The respondents are directed to submit as above. In the event, the adjudicating authority is of the view that the statement under Section 108 of the Act has to be relied upon then it goes without saying that the respondents shall be entitled to a full-fledged opportunity of cross-examining such of those persons from whom statements under Section 108 of the Act have been recorded. We once again make it clear that the substantial questions of law which have been raised by the revenue are left open and the observations and findings rendered by the learned Writ Court to justify its ultimate conclusion are not to be treated as precedent and the legal question is left open.

The adjudicating authority shall endeavor to complete the adjudication proceedings afresh as expeditiously as possible preferably within a period of four months from the date on which the personal hearing is concluded.

It is further made clear that this order shall enure in favour of the respondents who are before this Court and not in respect of any other persons who have not questioned the adjudication order dated 6th September, 2018 either before this Court or before the learned Tribunal.

With the above directions, the appeals stand disposed of.

With the consent of the learned advocates appearing for the respective parties, MAT/556/2019 is treated as on supplementary list and the same is also disposed of."

This appeal stands disposed of on similar lines and the parties are directed to abide by the above directions.

The stay application IA No : GA/2/2022 is also disposed of.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(SUPRATIM BHATTACHARYA, J.)

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AR(CR)